March 30, 2011

Via Electronic Filing

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Written *Ex Parte* Communication, WC Docket No. 07-245

Dear Ms. Dortch:

On March 31, 2011, Christopher Guttman-McCabe, Vice President, Regulatory Affairs and Brian Josef, Assistant Vice President, Regulatory Affairs, CTIA—The Wireless Association® ("CTIA"), along with Janae Walker Bronson and Karmen Rajamani of American Tower, Jay Bennett of AT&T, and Ray Rothermel of Sprint Nextel, met with Margaret McCarthy, Wireline Policy Advisor to Commissioner Michael Copps, to discuss the wireless industry's interest in the Commission's pending pole attachment proceeding.

During the meeting, CTIA reiterated the need for a Commission Order facilitating timely and nondiscriminatory wireless pole access, including access to the pole top and an established timeline for an electric utility to complete access. CTIA expressed support for: (1) a requirement in which the pole owner bears the burden of proving that additional time for granting access is warranted; and (2) expedited complaint procedures that "fast-track" resolution of access-related disputes.

CTIA explained that this process would enable utilities an opportunity to address any legitimate reasons for a delay in granting access under applicable timelines and potentially curtail the filing of complaints brought to the Commission by properly balancing incentives. In setting forth the make-ready timelines, the Commission has thoughtfully weighed industry practices and experiences to develop a timeline that is fair and reasonable for all parties involved. However, those timelines are only meaningful if there is a consequence for breaking them — and a presumption is the best way to achieve that goal. The utility will still have every opportunity to show that its conduct was reasonable — but after the timeline has run, the utility should be required to explain why its failure to meet the deadline was "reasonable."

In recent filings, some utilities continue to seek the "flexibility" to "stop the clock" unilaterally, in some cases for a long list of potential reasons. In certain circumstances, such as weather emergencies or other *force majeure* events, it may well be necessary to stop the clock. The Commission should, however, limit such circumstances narrowly so that the exceptions do not swallow the rule. In finalizing its approach here, the Commission should look to the lessons learned from its previous infrastructure investment initiatives. For example, the Commission has previously seen the necessity and value of tightly defining a "shot clock" to facilitate prompt wireless deployment. When the FCC established the wireless siting shot clock, the FCC

prescribed a fixed period that was deemed presumptively reasonable for local tower siting decisions.[1]

A similar approach is warranted in the pole attachment context. In the spirit of consensus, CTIA and wireless providers have agreed to a longer wireless make-ready period than their wireline counterparts — 178 days, 30 days longer than for access by wireline attachers. This 178-day shot clock was premised on the idea that at the end of that period — if the utility had failed to act, and there was no intervening circumstance beyond the utilities' control (as defined in the rule) — the utility's conduct would be presumed unreasonable in any subsequent regulatory proceeding. Such a result is at the very foundation of establishing a timeline — if the timeline is to be designed to reflect the reasonable realities of network deployment.

Additionally, in the event a party nevertheless must file an access-related complaint, CTIA recommended adoption of expedited procedures that "fast-track" these disputes. The Commission has recognized the need for prompt resolution of certain types of complaint proceedings through use of the Enforcement Bureau's Accelerated Docket, or "rocket docket."[2] The rocket docket provides for resolution of disputes within sixty days from the filing of a complaint. Moreover, the FCC has ample authority to adopt this process, as it may "conduct its proceedings as will best conduce to the proper dispatch of business and the ends of justice."[3] An expedited resolution of a tightly focused denial of access dispute should be achievable much faster than a full decision on rates, terms, and conditions. In resolving the issues here, the FCC should include an expedited dispute resolution process that will facilitate prompt deployment and investment.

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed via ECFS with your office. Should you have any questions, please do not hesitate to contact the undersigned.

Sincerely,

/s/ Brian M. Josef

Brian M. Josef

cc: Margaret McCarthy

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1 *Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review*, WT Docket 08–165, *Declaratory Ruling*, 24 FCC Rcd 13994, 14006 (2009) (*quoting* NENA Comments at 1-2), *recon. denied*, 25 FCC Rcd 11157 (2010), *pets. for review pending sub nom. City of Arlington, Texas v. FCC*, No. 10-60039 (5th Cir. filed Jan. 14, 2010). There was only one narrowly defined exception that could be invoked by local authorities to toll the clock — namely, notification of the applicant that its application is incomplete within 30 days of filing.

2 *See Formal Complaint Procedures*, CC Docket 96–238, *Second Report and Order*, 13 FCC Rcd 17018, ¶4 (1998); *see generally* 47 C.F.R. § 1.730; *see also id.* §§ 1.720, 1.721(a), (f), 1.724(k) 1.726(g), 1.729(i), 1.733(i).

3 *See* 47 C.F.R. § 1.1415; *see also* 47 U.S.C. § 154(j) ("The Commission may conduct its proceedings in such a manner as will best conduce to the proper dispatch of business and to the ends of justice.").